

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF NEW YORK

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DANIEL R. DALEY,

Plaintiff,

v.

Civil Action No.  
1:13-CV-1151 (DEP)

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

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APPEARANCES:

OF COUNSEL:

FOR PLAINTIFF

MARGOLIUS LAW FIRM  
7 Howard Street  
Catskill, NY 12414

PETER M. MARGOLIUS, ESQ.

FOR DEFENDANT

HON. RICHARD S. HARTUNIAN  
United States Attorney  
P.O. Box 7198  
100 S. Clinton Street  
Syracuse, NY 13261-7198

EMILY M. FISHMAN, ESQ.  
Special Assistant U.S. Attorney

DAVID E. PEEBLES  
U.S. MAGISTRATE JUDGE

## ORDER

Currently pending before the court in this action, in which plaintiff seeks judicial review of an adverse administrative determination by the Commissioner of Social Security, pursuant to 42 U.S.C. § 405(g), are cross-motions for judgment on the pleadings.<sup>1</sup> Oral argument was heard in connection with those motions on June 17, 2014, during a telephone conference conducted on the record. At the close of argument, I issued a bench decision in which, after applying the requisite deferential review standard, I found that the Commissioner's determination resulted from the application of proper legal principles and is supported by substantial evidence, providing further detail regarding my reasoning and addressing the specific issues raised by the plaintiff in this appeal.

After due deliberation, and based upon the court's oral bench decision, which has been transcribed, is attached to this order, and is incorporated herein by reference, it is hereby

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<sup>1</sup> This matter, which is before me on consent of the parties pursuant to 28 U.S.C. § 636(c), has been treated in accordance with the procedures set forth in General Order No. 18 (formerly, General Order No. 43) which was issued by the Hon. Ralph W. Smith, Jr., Chief United States Magistrate Judge, on January 28, 1998, and subsequently amended and reissued by Chief District Judge Frederick J. Scullin, Jr., on September 12, 2003. Under that General Order an action such as this is considered procedurally, once issue has been joined, as if cross-motions for judgment on the pleadings had been filed pursuant to Rule 12(c) of the Federal Rules of Civil Procedure.

ORDERED, as follows:

1) Defendant's motion for judgment on the pleadings is GRANTED.

2) The Commissioner's determination that the plaintiff was not disabled at the relevant times, and thus is not entitled to benefits under the Social Security Act, is AFFIRMED.

3) The clerk is respectfully directed to enter judgment, based upon this determination, DISMISSING plaintiff's complaint in its entirety.

A handwritten signature in black ink, appearing to read "David E. Peebles", is written over a horizontal line.

David E. Peebles  
U.S. Magistrate Judge

Dated: June 19, 2014  
Syracuse, NY

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

-----x  
DANIEL R. DALEY,

Plaintiff,

vs.

1:13-CV-1151

COMMISSIONER OF SOCIAL SECURITY,

Defendant.  
-----x

Transcript of a Decision on the Record held  
by teleconference on June 17, 2014, at the James  
Hanley Federal Building, 100 South Clinton Street,  
Syracuse, New York, the HONORABLE DAVID E. PEEBLES,  
United States Magistrate Judge, Presiding.

A P P E A R A N C E S

(By Telephone)

For Plaintiff: OFFICE OF PETER M. MARGOLIUS, ESQ.  
Attorneys at Law  
7 Howard Street  
Catskill, New York 12414  
BY: JANICE CAMMARATO

For Defendant: SOCIAL SECURITY ADMINISTRATION  
Office of Regional General Counsel  
Region II  
26 Federal Plaza - Room 3904  
New York, New York 10278  
BY: EMILY M. FISHMAN, ESQ.

*Jodi L. Hibbard, RPR, CSR, CRR  
Official United States Court Reporter  
100 South Clinton Street  
Syracuse, New York 13261-7367  
(315) 234-8547*

1 (In Chambers, Counsel present via telephone.)

2 THE COURT: All right. Thank you, I'll have to let  
3 that be the last word. I've reviewed carefully the briefs of  
4 the parties and the administrative transcript, the record  
5 that was before the administrative law judge and before the  
6 Commissioner when the final determination was made.

7 It reveals that the plaintiff was born in October  
8 of 1959, he's currently 54 years of age, single, lives alone,  
9 he drives, he did not finish high school, is able to read and  
10 write however, he has had several work experiences including  
11 as a warehouse and forklift -- warehouse worker and forklift  
12 operator, a short order cook making pizzas. His most  
13 significant work experience comes in the form of being a  
14 convenience store manager over the period of 15 years. I  
15 understand from his testimony that that encompasses three  
16 different store locations.

17 He has a history of a myocardial infarction and  
18 stent placement but that appears to be fully controlled and  
19 he sees a doctor only every six months for that condition.  
20 He suffered a workplace accident involving his left wrist in  
21 May of 2009, sought treatment initially in an emergency care  
22 facility and then from Dr. Louis DiGiovanni, an orthopedist.  
23 He had a trigger release, trigger finger release surgery in  
24 September 2010. He was examined by consultative examiner  
25 Dr. Kautilya Puri on October 25, 2010, and her report is in

1 the record.

2 The plaintiff applied for Disability Insurance  
3 benefits on August 4, 2010, alleging disability onset date of  
4 May 26, 2009 which coincides with the date of his  
5 work-related accident. A hearing was conducted after an  
6 initial denial of the application by Administrative Law Judge  
7 Gregui Mercado, G-r-e-g-u-i, on January 18, 2012. ALJ  
8 Mercado issued a decision on February 9, 2012. The Social  
9 Security Administration Appeals Council denied a review of  
10 that determination in July of 2013 making the administrative  
11 law judge's decision a final determination of the agency.

12 The administrative law judge applied the well-known  
13 five-step test for examining disability, considered the  
14 record which included not only the plaintiff's hearing  
15 testimony and all of his medical records but the testimony of  
16 a consultative physician who reviewed the records and a  
17 vocational expert. He found that the plaintiff did suffer  
18 from severe impairments that interfered with his ability to  
19 perform basic work activities, but he found that they were  
20 not sufficiently severe to meet or medically equal the listed  
21 presumptively disabling conditions set forth in the  
22 Commissioner's regulations.

23 After surveying the evidence and discussing the  
24 relative weight of various reports and medical evidence, the  
25 ALJ determined that plaintiff is capable of performing a full

1 range of light work which, as you know by regulation as was I  
2 think recited during the oral argument, involves lifting not  
3 more than 20 pounds at a time with frequent lifting or  
4 carrying of objects weighing up to 10 pounds. It also  
5 requires a good deal of walking or standing, and when it  
6 involves sitting most of the time with some pushing and  
7 pulling of arm or leg controls.

8 The Commissioner then concluded -- the ALJ, that  
9 is, based on the testimony of the vocational expert, that  
10 plaintiff is able to perform his past relevant work as  
11 convenience store manager. That was also based on the  
12 Dictionary of Occupational Titles or DOT description of that  
13 position, as well as confirmed by the vocational expert who  
14 also testified he's capable of performing past relevant work  
15 as a cashier and as a short order cook as well.

16 As you know, the standard that I must apply is  
17 extremely deferential. I'm tasked with determining whether  
18 the correct legal principles were applied by the  
19 administrative law judge and whether his determination is  
20 supported by substantial evidence. Substantial evidence  
21 being defined by the Supreme Court as such relevant evidence  
22 as a reasonable mind might accept as adequate to support a  
23 conclusion.

24 The -- I find that the ALJ's RFC determination is  
25 well supported. It is based on several items including the

1 reports of Dr. German Malaret, M-a-l-a-r-e-t, who testified  
2 during the hearing based on his review of the medical records  
3 that plaintiff did not suffer from any impairments, that is  
4 at page 70 and 71, that would preclude his ability to perform  
5 light work. It is also based upon Dr. Puri's consultative  
6 examination which can provide substantial evidence to support  
7 a conclusion. Dr. Puri found only an extremely modest loss  
8 of strength in the left hand some six weeks after the trigger  
9 finger release surgery, but concluded at page 256 of the  
10 record that the plaintiff did not suffer from any fine or  
11 gross motor activity limitations. There is no contrary  
12 opinion specifically stating that, other than -- from a  
13 treating source other than Dr. DiGiovanni's notations or  
14 treating source notations that plaintiff is disabled. And of  
15 course, as you know, that is a matter that is reserved to the  
16 Commissioner and it doesn't help inform the decision of  
17 disability because it doesn't address specifics in terms of  
18 any limitations.

19 So, it also appears from having reviewed  
20 Dr. DiGiovanni's office notes that the trigger finger surgery  
21 healed well. I do want to say that I did, I do reject  
22 government's -- the Commissioner's argument about these  
23 conditions not being transitory and not lasting for  
24 sufficient amount of time necessary to support a finding of  
25 disability because I think that there are indications that



1 they extended over a year and may have been interrelated, but  
2 I do find nonetheless that even considering them in  
3 combination, they did not undermine the RFC finding. Again,  
4 the trigger finger surgery apparently was well healed by  
5 October of 2011. Plaintiff could make a fist and he had  
6 unlimited range of motion, that is at page 405 of the  
7 administrative transcript. In January of 2011 range of  
8 motion was normal in the wrists and hands, that's at page  
9 287. In March of 2011, plaintiff had full range of motion  
10 and only a slight decrease in grip strength, so -- and as I  
11 indicated, at page 404, plaintiff on several occasions  
12 including October 8, 2010, December 13, 2010, and October 7,  
13 2011 reported that the pain in his wrist was only 2 on a  
14 scale of 10.

15 I note that, although it primarily relates to the  
16 neck, at page 404 there's an indication that plaintiff did  
17 not go to physical therapy because he didn't believe it would  
18 help him. There's also an indication at page 349 of the  
19 administrative transcript that the plaintiff was discharged  
20 from occupational therapy in December of 2009 due to failure  
21 to cooperate. He's taking only ibuprofen and his reports of  
22 daily activities in the statement of -- the disability report  
23 to the Commissioner and also his reports to Dr. Puri reveal a  
24 fairly robust list of daily activities.

25 So given all of these factors and in particular the

1 consultative report of Dr. Puri and the testimony of  
2 Dr. Malaret, I conclude that the Commissioner's  
3 determination, the RFC finding, and the ultimate  
4 determination which was based on a hypothetical approximating  
5 the RFC is supported by substantial evidence and resulted  
6 from the application of proper legal principles. I therefore  
7 will grant defendant's motion for judgment on the pleadings  
8 dismissing plaintiff's complaint.

9 Again, I'd like to thank you both for excellent  
10 arguments. You both have an excellent command of the facts  
11 and the legal arguments and the court appreciates that.

12 MS. FISHMAN: Thank you, your Honor.

13 MS. CAMMARATO: Thank you, your Honor.

14 (Proceedings adjourned, 2:28 p.m.)  
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CERTIFICATE OF OFFICIAL REPORTER

I, JODI L. HIBBARD, RPR, CRR, CSR, Federal Official  
Realtime Court Reporter, in and for the United States  
District Court for the Northern District of New York, DO  
HEREBY CERTIFY that pursuant to Section 753, Title 28, United  
States Code, that the foregoing is a true and correct  
transcript of the stenographically reported proceedings held  
in the above-entitled matter and that the transcript page  
format is in conformance with the regulations of the Judicial  
Conference of the United States.

Dated this 18th day of June, 2014.

/S/ JODI L. HIBBARD  
JODI L. HIBBARD, RPR, CRR, CSR  
Official U.S. Court Reporter